IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6572 OF 2002.

1. Shri Shrikant Hanuman, Churmure, adult, Occ. service, r/o D/424, Mahindra & Mahindra, Colony, Shrikrishna Nagar, Borivali (E), Mumbai - 400 066.	]
2. Shri Vinod Hanuman Churmure, adult, Occ: Trader, r/o. Shivparvati Sadan, Bhaskar Aali, Vasai, Tal. Vasai, Dist. Thane.	] .. Petitioners (Orig. Defdts.)

Versus

Mr. Keshar Shankar Pawaskar, age 76 years, Occ: Retired, r/o Shivparvati Sadan, Bhaskar Aali, Vasai, Dist: Thane.	] .. Respondent (Orig.Respdt.)

Mr. R.R. Salvi for the petitioners.

Mr. K.K. Malpathak for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 8TH AUGUST, 2005

ORAL JUDGMENT. :

1. Petitioners are tenants of the respondent-landlord. Both the Courts, after considering the evidence led by the parties, including the medical evidence in support of the illness and ill health of the landlord have supported the case as pleaded in respect

of the premises in question.

2. Heard Mr. R.R. Salvi learned counsel appearing for the petitioners who basically contended that in the year 1996, when the suit was filed, there was no such case made out and/or pleaded so far as the ill health as sought to be contended before this Court. The landlord ought to have, at the relevant time, when admittedly he was not well and was not in a position to climb up or there were physical difficulties in movements, insisted that issue as a basic foundation for bonafide need. Therefore, it is difficult to accept the landlord's case as contended. The learned counsel, therefore, submitted to interfere with the finding given by the Courts below on this ground.

3. I am not convinced with this for the simple reason that there is a sufficient material evidence on the record, basically of the doctor, who supported the landlord in respect of his ill health. The medical evidence, as it goes, remained uncontroverted so far as the age, physical capacity of the landlord and his existing physical condition is concerned. Therefore, merely because at the relevant time those pleas were not taken, that itself, according to me, cannot be the foundation and/or reason to interfere with the finding

given by the Court below in respect of bonafide need. After hearing both the parties, there is nothing which is borne out from the record and/or pointed out that there was any perversity and/or illegality in taking the view by the Courts below. There is no doubt that it is the landlord, being the owner of the property, who has every right to enjoy and use the premises as per his requirement. It is difficult for any third person to suggest and/or advise the landlord to use the premises and/or how to use the same. The tenants' case, in these circumstances, cannot be accepted even for the suggestion, as sought to be raised in the matter by the learned counsel appearing for the petitioners.

4. The parties are free to settle amongst themselves to change or exchange the premises. But, if the landlord expressed his inability in view of the need as already placed on the record and supported by the medical evidence in such circumstances, there is no question to suggest any alternative ways of enjoying the premises in question. Insofar as comparative hardship issue is concerned as the view taken by the Courts below and also in view of the observation made above, the same tilts in favour of the landlord.

5. Taking this into account and including the

reasoning given by the Courts below and in the facts and circumstances of the case, I am not inclined to interfere with the concurrent findings given by the Courts below. Resultantly, the Writ Petition is dismissed. Rule is discharged. Interim stay, as granted, also stands vacated. No order as to costs.

6. At the request of the learned counsel appearing for the petitioners, six months' time is granted to vacate the premises on a condition of filing usual undertaking by the petitioners and all adult family members staying in the suit premises, within a period of 2 weeks from today. In the meanwhile, the petitioners should not create any third party right in the premises. The arrears of rent if any, should be paid by the petitioners within a period of two weeks from today. If there is breach of any of the conditions of the undertaking, the respondent-landlord is entitled to execute the decree.

. Issuance of certified copy expedited.

[ANOOP V. MOHTA, J.]

[srpasha@hc]